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Husch Blackwell Sanders, LLP
Husch Blackwell Sanders LLP Welsh & Katz
120 S RIVERSIDE PLAZA
22ND FLOOR
CHICAGO, IL 60606

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| EXAMINER |
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MURRAY, DANIEL C

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/825,570 | Applicant(s) HODSON ET AL. | |
| | Examiner DANIEL C. MURRAY | Art Unit 2443 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19AUG2009 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-6, 8-9, 15-20, 22-23, 29-34, 36-37, and 40** are rejected under 35 U.S.C. 102(e) as being anticipated by **McKinnon et al. (US 2004/0133647 A1)**.

a) Consider **claims 1 and 29**, McKinnon et al. clearly show and disclose, a method and apparatus of/for processing information within a computer system, such method comprising the steps of: sending a SIP SUBSCRIBE message from a first computer resource of the computer system to a presentity server of the computer system, the presentity server separate from the first computer resource, and requesting a status of a second resource separate from the presentity server

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where the second resource performs a predetermined service for the first resource (figure 3, abstract, paragraph [0005], [0020] [0021], [0027], [0028], [0029], [0031]); sending a SIP NOTIFY message from the presentity server to the first resource notifying the first resource of the status of the second resource (abstract, paragraph [0005], [0021], [0027], [0028], [0029], [0031]).

b) Consider **claims 2 and 30**, and **as applied to claims 1 and 29 above**, McKinnon et al. clearly show and disclose, the method and apparatus for processing information as in claims 1 and 29 further comprising the first resource requesting the predetermined service from a third resource when the second resource is not available (paragraph [0018], [0019], [0023], [0033], [0034], [0035], [0040], [0041], [0042]).

c) Consider **claim 3**, and **as applied to claim 1 above**, McKinnon et al. clearly show and disclose, the method of processing information as in claim 1, wherein the second resource is an automatic contact distributor which searches for the presentity server upon being activated and registers a presence by sending a SIP REGISTER message to the presentity server (paragraph [0002], [0004], [0028], [0030], [0040]).

d) Consider **claim 4**, and **as applied to claim 3 above**, McKinnon et al. clearly show and disclose, the method as in claim 3, wherein the resource sends a SIP SUBSCRIBE message to the presentity server identifying the automatic, contact distributor and requesting status information regarding the automatic contact distributor (paragraph [0002], [0004], [0026], [0027], [0031], [0037]).

e) Consider **claim 5**, and **as applied to claim 4 above**, McKinnon et al. clearly show and disclose, the method of processing information as in claim 4, wherein the presentity server further confirms that the automatic contact distributor is registered and sends a SUBSCRIBE message requesting a SIP NOTIFY message to the automatic contact distributor in response to confirming registration (paragraph [0002], [0004], [0026], [0027], [0031], [0038], [0039]).

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f) Consider **claim 6**, and **as applied to claim 5 above**, McKinnon et al. clearly show and disclose, the method of processing information as in claim 5, wherein the requested status further comprises determining whether the automatic contact distributor is available or unavailable and the automatic contact distributor forwarding the NOTIFY message containing notification of availability of the automatic contact distributor to the presentity server and to the first computer resource (paragraph [0002], [0004], [0018], [0019], [0023], [0040], [0041], [0042]).

g) Consider **claim 8**, and **as applied to claim 5 above**, McKinnon et al. clearly show and disclose, the method of processing information as in claim 5 wherein-automatic call distributor forwards the NOTIFY message containing a loading level of the call distributor to the presentity server and the first computer resource (figure 7a, figure 7b, paragraph [0040], [0041], [0042], [0043]).

h) Consider **claim 9**, and **as applied to claim 8 above**, McKinnon et al. clearly show and disclose, the method of processing information as in claim 8 wherein the second resource further comprises a call routing application of the automatic call distributor (paragraph [0029], [0030]) and wherein a report generator sends a SIP SUBSCRIBE message to the presentity server requesting status of the first resource and second resource and in response receives data for generating reports (figure 3, abstract, paragraph [0005], [0018], [0019], [0020], [0021], [0023], [0027], [0028], [0029], [0031]).

i) Consider **claim 15**, McKinnon et al. clearly show and disclose, an apparatus for processing information within a computer system, such apparatus comprising: means for sending a SIP SUBSCRIBE message from a first computer resource of the computer system to a presentity server of the computer system, the presentity server separate from the first computer resource, requesting a status of a second resource, separate from the presentity server, where the second resource performs call transfers for the first resource based upon the type of each call (figure 3,

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abstract, paragraph [0005], [0020] [0021], [0027], [0028], [0029], [0031]); means for sending a SIP NOTIFY message from the presentity server to the first resource notifying the first resource of the status of the second resource (abstract, paragraph [0005], [0021], [0027], [0028], [0029], [0031]); and means for transferring the calls to a third resource when the second resource is not available (paragraph [0018], [0019], [0023], [0033], [0034], [0035], [0040], [0041], [0042]).

j) Consider **claim 16**, and **as applied to claim 15 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claim 15 further comprising the first resource requesting the call transfers from a third resource when the second resource is not available (paragraph [0018], [0019], [0023], [0033], [0034], [0035], [0040], [0041], [0042]).

k) Consider **claims 17 and 31**, and **as applied to claim 15 and 29 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claims 15 and 29 wherein the computer system further comprises an automatic call distribution system (paragraph [0002], [0028], [0040]).

l) Consider **claims 18 and 32**, and **as applied to claims 17 and 31 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claims 17 and 31 wherein the first and second resources further comprise call distributors of the automatic call distribution system (abstract, paragraph [0033], [0034], [0035], [0036], [0040], [0041], [0042]).

m) Consider **claim 33**, and **as applied to claim 32 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claim 32 wherein the predetermined service further routing calls to agents (abstract, paragraph [0036], [0040], [0041], [0042]).

n) Consider **claim 19**, and **as applied to claim 18 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claim 18 wherein the call transfers comprise routing calls to agents (abstract, paragraph [0033], [0034], [0035], [0036], [0040], [0041], [0042]).

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o) Consider **claims 20 and 34**, and **as applied to claims 19 and 33 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claims 19 and 33 wherein the requested status further comprises determining whether the second call distributor is available or unavailable (paragraph [0018], [0019], [0023], [0040], [0041], [0042]).

p) Consider **claims 22 and 36**, and **as applied to claims 15 and 29 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claims 15 and 29 wherein the computer system further comprises an automatic call distributor (paragraph [0002], [0028], [0040]).

q) Consider **claims 23 and 37**, and **as applied to claims 22, and 36 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claims 22 and 36 wherein the second resource further comprises a call routing application of the automatic call distributor (paragraph [0029], [0030]).

r) Consider **claim 40**, and **as applied to claim 29 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claim 29 further comprising a reconfiguration processor which subscribes to a status of the first resource, detects whether the first resource has gone offline thereby becoming; an offline resource, and in response to such a detection, instructs a proxy server to redirect to another resource any calls that would have gone to the offline resource (McKinnon; figure 7a, figure 7b, paragraph [0040], [0041], [0042]).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the

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subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. **Claims 7, 21, and 35** are rejected under 35 U.S.C. 103(a) as being unpatentable over **McKinnon et al. (US 2004/0133647 A1)** in view of **Chaney et al. (US Patent Publication # US 2003/010800 A1)** in further view of **Wolff (US Patent # US 6,185,601 B1)**.

a) Consider **claim 7**, and as applied to claim 6 above, McKinnon et al. clearly show and disclose, the method as in claim 6, wherein the step of determining the availability of the automatic call distributor (paragraph [0002], [0004], [0028], [0040]). However, McKinnon et al. does not specifically disclose a loading level of the automatic call distributor with a threshold level and determining that the automatic call distributor is unavailable when the loading level exceeds the

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threshold level and determining that the automatic call distributor is available when the loading level does not exceed the threshold.

Chaney et al. show and disclose a system and method of providing access to services in a telecommunications network utilizing the Session Initiation Protocol (SIP) wherein determining the availability of the automatic call distributor comprises comparing a loading level of the automatic call distributor (abstract, paragraph [0015], [0040]).

Therefore, it would have been obvious to one of ordinary skill in the art that the time the invention was made to incorporate the teachings of Chaney et al. into the system of McKinnon et al. for the purpose of making call distribution more efficient by preventing any one call distributor from becoming overloaded. However, McKinnon et al. as modified by Chaney et al. does not specifically disclose comparing a loading level of the automatic distributor with a threshold level and determining that the automatic distributor is unavailable when the loading level exceeds the threshold level and determining that the automatic distributor is available when the loading level does not exceed the threshold.

Wolff shows and discloses a system for distributing the I/O request load over the components of a network. More particularly, a system for distributing the responsibility for carrying out I/O requests among various servers on a network, wherein Wolff discloses comparing a loading level of the automatic distributor with a threshold level and determining that the automatic distributor is unavailable when the loading level exceeds the threshold level and determining that the automatic distributor is available when the loading level does not exceed the threshold (abstract, column 2 lines 52-62, column 11 lines 34-41, column 25 lines 26-33 lines 48-53).

Therefore, it would have been obvious to one of ordinary skill in the art that the time the invention was made to incorporate dynamic load balancing based on thresholds, as taught by, Wolff

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into the system of McKinnon et al. as modified by Chaney et al. for the purpose of for the purpose of making call distribution more efficient by preventing any one call distributor from becoming overloaded.

b) Consider **claims 21 and 35**, and **as applied to claims 20 and 34 above**, McKinnon et al. clearly show and disclose, the apparatus for processing information as in claims 20 and 34, wherein the step of determining the availability of the second call distributor. However, McKinnon et al. does not specifically disclose a loading level of the second call distributor with a threshold level and determining that the second call distributor is unavailable when the loading level exceeds the threshold level and determining that the second call distributor is available when the loading level does not exceed the threshold.

Chaney et al. show and disclose a system and method of providing access to services in a telecommunications network utilizing the Session Initiation Protocol (SIP) wherein determining the availability of the second call distributor comprises comparing a loading level of the second call distributor (abstract, paragraph [0015], [0040]).

Therefore, it would have been obvious to one of ordinary skill in the art that the time the invention was made to incorporate the teachings of Chaney et al. into the system of McKinnon et al. for the purpose of making call distribution more efficient by preventing any one call distributor from becoming overloaded. However, McKinnon et al. as modified by Chaney et al. does not specifically disclose comparing a loading level of the second call distributor with a threshold level and determining that the second call distributor is unavailable when the loading level exceeds the threshold level and determining that the second call distributor is available when the loading level does not exceed the threshold.

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Wolff shows and discloses a system for distributing the I/O request load over the components of a network. More particularly, a system for distributing the responsibility for carrying out I/O requests among various servers on a network, wherein Wolff discloses comparing a loading level of the second call distributor with a threshold level and determining that the second call distributor is unavailable when the loading level exceeds the threshold level and determining that the second call distributor is available when the loading level does not exceed the threshold (abstract, column 2 lines 52-62, column 11 lines 34-41, column 25 lines 26-33 lines 48-53).

Therefore, it would have been obvious to one of ordinary skill in the art that the time the invention was made to incorporate dynamic load balancing based on thresholds, as taught by, Wolff into the system of McKinnon et al. as modified by Chaney et al. for the purpose of for the purpose of making call distribution more efficient by preventing any one call distributor from becoming overloaded.

8. **Claims 10, 24, and 38** are rejected under 35 U.S.C. 103(a) as being unpatentable over **McKinnon et al. (US 2004/0133647 A1)** in view of **Gray et al. (US Patent Publication US 2005/0100157 A1)**.

a) Consider **claims 10, 24, and 38**, and as applied to **claims 9, 23, and 37** above, McKinnon et al. clearly show and disclose, the method and apparatus of/for processing information as in claims 9, 23, and 37. However, McKinnon et al. does not specifically disclose the first resource further comprises a call classification application of the automatic call distributor that determines a call type of an incoming call.

Gray et al. show and disclose a context aware call processing architecture for effecting user-defined features wherein the first resource further comprises a call classification application of the

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automatic call distributor that determines a call type of an incoming call (abstract, paragraph [0008], [0009], [0053]).

Therefore, it would have been obvious to one of ordinary skill in the art that the time the invention was made to incorporate the teachings of Gray et al. into the system of McKinnon et al. for the purpose of handling calls based on context information.

9. **Claims 11-14, 25-28, and 39** are rejected under 35 U.S.C. 103(a) as being unpatentable over **McKinnon et al. (US 2004/0133647 A1)** as modified by **Gray et al. (US Patent Publication US 2005/0100157 A1)** in view of **Chaney et al. (US Patent Publication # US 2003/010800 A1)** in further view of **Wolff (US Patent # US 6,185,601 B1)**.

a) Consider **claims 11, 25, and 39**, and as applied to **claims 10, 24, and 38 above**, McKinnon et al. as modified by Gray et al. clearly show and disclose, the method and apparatus of/for processing information as in claims 10, 24, and 38. However, McKinnon et al. as modified by Gray et al. does not specifically disclose defining the status as being a loading level of the call routing application.

Chaney et al. show and disclose a system and method of providing access to services in a telecommunications network utilizing the Session Initiation Protocol (SIP) wherein determining the availability of the second call distributor comprises comparing a loading level of the second call distributor (abstract, paragraph [0015], paragraph [0040]).

Therefore, it would have been obvious to one of ordinary skill in the art that the time the invention was made to incorporate the teachings of Chaney et al. into the system of McKinnon et al. as modified by Gray et al. for the purpose of making call distribution more efficient by preventing any one call distributor from becoming overloaded. However, McKinnon et al. as modified by Gray

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et al. as further modified by Chaney et al. does not specifically disclose comparing a loading level of the second call distributor with a threshold level and determining that the second call distributor is unavailable when the loading level exceeds the threshold level and determining that the second call distributor is available when the loading level does not exceed the threshold.

Wolff shows and discloses a system for distributing the I/O request load over the components of a network. More particularly, a system for distributing the responsibility for carrying out I/O requests among various servers on a network, wherein Wolff discloses comparing a loading level of the second call distributor with a threshold level and determining that the second call distributor is unavailable when the loading level exceeds the threshold level and determining that the second call distributor is available when the loading level does not exceed the threshold (abstract, column 2 lines 52-62, column 11 lines 34-41, column 25 lines 26-33 lines 48-53).

Therefore, it would have been obvious to one of ordinary skill in the art that the time the invention was made to incorporate dynamic load balancing based on thresholds, as taught by, Wolff into the system of McKinnon et al. as modified by Gray et al. as further modified by Chaney et al. for the purpose of for the purpose of making call distribution more efficient by preventing any one call distributor from becoming overloaded.

b) Consider **claims 12 and 26**, and **as applied to claims 11 and 25 above**, McKinnon et al. as modified by Gray et al. as modified by Chaney et al. as further modified by Wolff clearly show and disclose, the method and apparatus of/for processing information as in claims 11 and 25 further comprising defining the loading level as a call queue length (McKinnon et al. figure 7a, figure 7b, paragraph [0040], [0041] , [0042], [0042]; Chaney et al. abstract, paragraph [0015], [0040]).

c) Consider **claims 13 and 27**, and **as applied to claim 12 and 26 above**, McKinnon et al. as modified by Gray et al. as modified by Chaney et al. as further modified by Wolff clearly show

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and disclose, the method and apparatus of/for processing information as in claims 12 and 26 further comprising determining that the routing application is unavailable when the loading level exceeds a predetermined threshold and available when the routing application does not exceed the predetermined threshold (Chaney et al. abstract, paragraph [0015], paragraph [0040]).

d) Consider **claim 14**, and **as applied to claim 13 above**, McKinnon et al. as modified by Gray et al. as modified by Chaney et al. as further modified by Wolff clearly show and disclose, the method of processing information as in claim 13 further comprising the call classification application requesting the predetermined service from a third resource when the call routing application is not available (McKinnon; paragraph [0018], [0019], [0023], [0033], [0034], [0035], [0040], [0041], [0042]; Chaney; abstract, [0015], [0040]).

e) Consider **claim 28**, and **as applied to claim 27 above**, McKinnon et al. as modified by Gray et al. as modified by Chaney et al. as further modified by Wolff clearly show and disclose, the apparatus for processing information as in claim 27 wherein the call classification application requesting the third resource when the call routing application is not available (McKinnon; paragraph [0018], [0019], [0023], [0033], [0034], [0035], [0040], [0041], [0042]; Chaney; abstract, [0015], [0040]).

Response to Arguments

10. Applicant's arguments filed 19AUG2009 have been fully considered but they are not persuasive.

Applicant argues that “[i]n the claim a first resource uses the SUBSCRIBE message to request a status of a second resource while in McKinnon, the SUBSCRIBE messages are used by a first presentity in the presentity server, to request a relationship with another

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presentity within the presentity server.” and that “...McKinnon does not send the SIP NOTIFY message from the second resource to the separate first resource to notify status of the second, but rather sends the NOTIFY messages between presentities within the presence server. Sending messages between the presentity server and separate devices is completely different from a presentity server communicating within itself.”

The Examiner respectfully disagrees; as stated in the previous Office Action McKinnon clearly disclose other resources (participating devices) also use the SUBSCRIBE/NOTIFY messages to establish a relationships with presentities (figure 3, paragraph [0005], [0027], [0031], [0033], [0034], [0040], [0041]) and as such isn't limited to just watcher devices. McKinnon also clearly discloses that each of the resources 20 (watcher devices and participant devices) has its own presentity 16 and the resources are separate from the presentity server 14 (figure 3, paragraph [0026], [0027]). The presentity server and the presentities thereon are clearly providing availability information (abstract, paragraph [0018], [0019]) to the resources with which they are associated, therefore the SUBSCRIBE/NOTIFY messages being sent between presentities is equivalent to sending the SUBSCRIBE/NOTIFY messages between the resources themselves (i.e. the presentities are functionally part of the associated resource). Furthermore, McKinnon clearly discloses that each of the participant devices are represented by a particular presentity in the presences system and that the presentities communicate with the participant devices (paragraph [0026], [0027], [0039]). Therefore, McKinnon clearly discloses sending messages between the presentity server and separate devices as well as sending messages within a presentity server itself.

Applicant argues that “claim 15 is further distinguishable because the references do not disclose a transfer of calls to a third resource when the call transferring second resource is not available as now claimed.”

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The Examiner respectfully disagrees; McKinnon clearly discloses transfer of calls to a third resource when the call transferring second resource is not available (paragraph [0018], [0019], [0023], [0033], [0034], [0035], [0040], [0041], [0042]). McKinnon clearly discloses that when a second resource (telephone 2/agent 2) is not available (e.g. when call queue is full and thus unavailable or its status is busy) to take the call it will refer the call to a third resource (telephone 3/agent 3). Therefore, McKinnon clearly discloses transfer of calls to a third resource when the call transferring second resource is not available.

Applicant argues that “Chaney describes determining a conference server with the lightest load but does not describe the claimed comparing of the load level to a threshold and determining that the ACD is unavailable if it exceeds the threshold.” and that “Wolff merely discloses I/O load balancing to a plurality of server nodes but does not compare ACD load level to a threshold to determine if the ACD is available or not.”

The Examiner respectfully disagrees; in response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). McKinnon clearly discloses determining the availability of the automatic call distributor (paragraph [0002], [0004], [0028], [0040]), Chaney clearly discloses wherein determining the availability of the automatic call distributor comprises comparing a loading level of the automatic call distributor (abstract, paragraph [0015], [0040]), and Wolff clearly discloses determining that the automatic distributor is unavailable when the loading level exceeds the threshold level and determining that the automatic distributor is available when the loading level does not exceed the threshold (abstract, column 2 lines 52-62, column 11 lines 34-41, column 25 lines 26-33 lines 48-53). McKinnon in general determines if a

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device is available and if it is not redirects the call to an available device (agent/telephone). Chaney clearly discloses redirecting a conference based on the load of the conference servers, the most lightly loaded being considered available and the more heavily loaded ones being considered unavailable. Finally, Wolff clearly discloses determining the utilization level of a first server and redirecting subsequent requests for at least one resource to a second server node amongst a plurality of server nodes in response to determining the utilization level of the first server, it is clear (particularly from Wolff; column 25 lines 26-33 lines 48-53) that a threshold is being used to determine the utilization of the server. Therefore, the combination of McKinnon, Chaney, and Wolff clearly discloses comparing of the load level to a threshold and determining that the ACD is unavailable if it exceeds the threshold.

Applicant argues that Gray does not discloses "...call classification application determining a call type.

The Examiner respectfully disagrees; Gray clearly discloses call classification application determining a call type (Gray; abstract, paragraph [0008], [0009], [0053]). Gray clearly discloses that calls are associated with it some indicators that are pertinent to the user's call that provide evidence of the relevance, urgency and importance of the call to the user. Such indicators include caller identity, role relationship between caller and called party, group or project membership, location of user, current state of called user, subject of the call, and so on. Some of these evidential indicators are explicit in the call and some can be derived by inference from other indicators. The indicators disclosed by Gray clearly indicate (classify) the type of call.

Applicant argues that "Gray and Wolff also fails to teach or suggest the above discussed features as well as the claimed use of queue length, loading of call routing application and a third resource."

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The Examiner respectfully disagrees; in response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). McKinnon clearly discloses the use of queue length (McKinnon et al. figure 7a, figure 7b, paragraph [0040], [0041], [0042], [0042]), Chaney clearly discloses determining the availability of the second call distributor comprises comparing a loading level of the second call distributor (abstract, paragraph [0015], paragraph [0040]), and McKinnon clearly discloses the use of a third resource when a second resource is not available (paragraph [0018], [0019], [0023], [0033], [0034], [0035], [0040], [0041], [0042]).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL C. MURRAY whose telephone number is 571-270-1773. The examiner can normally be reached on Monday - Friday 0800-1700 EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger can be reached on (571)-272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/DCM/

Examiner, Art Unit 2443

/Tonia LM Dollinger/

Supervisory Patent Examiner, Art Unit 2443